

## 48A C.J.S. Judges § 314

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 2. Mode and Sufficiency of Raising Objection

###### a. General Considerations

### § 314. Form and content of disqualification application —Disqualification because judge may be material witness

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

**A motion to disqualify a judge may be made on the basis that the judge is a material witness for or against one of the parties to the cause, in which case it must show that such ground exists.**

A motion to disqualify a judge may be made on the basis that the judge is a material witness for or against one of the parties to the cause, in which case it must show that such ground exists.<sup>1</sup> If a judge is sought to be disqualified on the ground that the judge may be a material witness in the case, the application or petition must clearly show wherein the testimony of such judge is material in the cause.<sup>2</sup> The mere statement that the judge is a material witness is insufficient.<sup>3</sup> In a criminal trial, an accused seeking to disqualify a judge on the ground that he or she may be a material witness at the trial need not allege in the affidavit the testimony that the judge would be called upon to give in order to show its relevancy.<sup>4</sup> Where it appears that the testimony of the judge is not necessary, the application is properly denied.<sup>5</sup>

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#### Footnotes

<sup>1</sup> Fla.—[Minaya v. State](#), 118 So. 3d 926 (Fla. 5th DCA 2013).

<sup>2</sup> Okla.—[Pitman v. Doty](#), 1968 OK 16, 441 P.2d 428 (Okla. 1968).

- 3 Fla.—*State ex rel. Ferrera v. Sandler*, 152 Fla. 517, 12 So. 2d 298 (1943).  
Ky.—*Rosenberg v. Commonwealth ex rel. Otte*, 255 Ky. 413, 74 S.W.2d 478 (1934).  
Okla.—*Pitman v. Doty*, 1968 OK 16, 441 P.2d 428 (Okla. 1968).
- 4 Okla.—*Pitman v. Doty*, 1968 OK 16, 441 P.2d 428 (Okla. 1968).  
Wash.—*State v. Sefrit*, 82 Wash. 520, 144 P. 725 (1914).
- 5 Kan.—*Steele v. Currie*, 131 Kan. 32, 289 P. 444 (1930).  
Okla.—*Pitman v. Doty*, 1968 OK 16, 441 P.2d 428 (Okla. 1968).

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